

COURT OF APPEALS, DIVISION THREE, STATE OF WASHINGTON

TERESA K. ROY,)	No. 27375-0-III
)	
Appellant,)	
)	
v.)	ORDER CORRECTING
)	OPINION
DEPARTMENT OF LABOR AND)	
INDUSTRIES ELECTRIC BOARD,)	
)	
Respondent.)	

IT IS ORDERED, the Court's opinion filed July 14, 2009 is hereby corrected as follows:

Page 1, Paragraph 1, first portion of sentence 1 under BACKGROUND shall read as follows:

In the course of inspecting new home wiring in Clarkston during April 2005, Department of Labor & Industries (DLI) electrical compliance inspector Robert Olson was twice told by

IT IS FURTHER ORDERED, that all references to "DOL" on pages 5 and 6 of the opinion shall be corrected to read "DLI."

DATED:

FOR THE COURT:

JOHN A. SCHULTHEIS

CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TERESA K. ROY,)	No. 27375-0-III
)	
Appellant,)	
)	
v.)	
)	Division Three
DEPARTMENT OF LABOR AND)	
INDUSTRIES ELECTRIC BOARD,)	
)	
Respondent.)	UNPUBLISHED OPINION

Korsmo, J. — Representing herself, Teresa Roy challenges the sufficiency of the evidence to uphold two civil infractions for installing telecommunications equipment systems without a license. The record supports that determination. Accordingly, we affirm.

BACKGROUND

In the course of inspecting new home wiring in Clarkston during April 2005, Department of Labor and Industries (DLI) electrical compliance inspector Robert Olson

was twice told by homeowners that while they had contracted with D&N Satellite for installation of telecommunications equipment, they received invoices for the work from Satellite Store – WA. Ms. Roy is the owner of Satellite Store – WA. Her brother, Lawrence Doyle, is the owner of D&N Satellite.

Mr. Olson contacted Ms. Roy and confirmed that she had acted as a subcontractor for her brother and installed the two satellite systems. She also agreed that she did not have a telecommunications contractor license. Mr. Olson issued Ms. Roy two infractions for installing equipment without a telecommunications contractor license. As first offenses, each infraction carried a \$500 civil penalty.

Mr. Olson also contacted Mr. Doyle. Doyle told Olson that he had hired Ms. Roy because he did not have a Washington license to install satellite systems. Ms. Roy and her son installed the systems. Olson also issued citations to Mr. Doyle.

Ms. Roy appealed her citations. Mr. Olson testified before the administrative law judge and repeated the statements made to him by the homeowners and by Mr. Doyle. He also testified that Ms. Roy had told him that she did the work because her brother had been injured in an accident. Mr. Olson also testified to Ms. Roy's statements to him that she did not have the telecommunications contractor license and that she was trying to aid her injured brother. Copies of the checks from the customers made out to Satellite Store – WA and endorsed by Ms. Roy for that company, and the invoices they had received from Satellite Store – WA, were admitted into evidence.

Ms. Roy testified on her own behalf. She told the examiner that her involvement

was limited to cashing the checks for the installation and that she had done so because her brother had substantial bills after a car accident, leading her to fear that his accounts might be garnished. She confirmed that the endorsements on the checks were her signature. The hearing examiner expressed “serious concerns” about Ms. Roy’s credibility and stated: “Her testimony is therefore discounted.” Clerk’s Papers at 137-138. The hearing examiner sustained the infractions.

Ms. Roy appealed to the State of Washington Electrical Board (Board). The Board adopted the administrative law judge’s findings of fact and conclusions of law and affirmed the citations and penalties. Ms. Roy then appealed to the Asotin County Superior Court, arguing that she and her business were not involved in the installations. The superior court concluded that substantial evidence supported the Board’s rulings and affirmed the Board’s order and penalties. Ms. Roy then appealed to this court.

ANALYSIS

This court, like the superior court, reviews an administrative appeal by considering the record before the Board. The Administrative Procedure Act permits a reviewing court to reverse an administrative board’s adjudicative decision only in certain circumstances, including when: (1) the administrative decision is based on an error of law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious. RCW 34.05.570(3).

Other standards also apply in this well settled area of law. The function of the appellate courts is to review the action of the trial courts and other fact-finding bodies.

Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. *See, e.g., Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 572, 575, 343 P.2d 183 (1959). Because of the fact-finding function of the trial court or administrative body, it is the responsibility of the party challenging a finding to establish that it was not supported by sufficient evidence to convince a reviewing court of the truth of the fact. *State v. Halstien*, 122 Wn.2d 109, 128-129, 857 P.2d 270 (1993). In other words, the challenging party must show there was insufficient evidence supporting the challenged finding of fact, rather than arguing there was evidence in support of a contrary view.

Ms. Roy was charged with violating RCW 19.28.420. That statute provides in its very first sentence:

It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining telecommunications systems without having a telecommunications contractor license.

RCW 19.28.420(1). A “telecommunications system” is defined as the cabling system between a local service provider and the customer’s premises. RCW 19.28.400(13).

To find that Ms. Roy committed the infraction, DLI had to establish that she or her company installed satellite equipment and did so without being licensed by DLI. Ms. Roy contends that the evidence did not show that she or her company installed the equipment. The other elements are not in question.

To establish Ms. Roy’s involvement in the satellite installation, DLI submitted her statements to Mr. Olson and the statements made to Olson by the customers and Mr.

Doyle. The invoices and payment checks also were admitted. On appeal, Ms. Roy argues that all of the statements were hearsay and should not have been considered. There are a couple of problems with that argument. First, Ms. Roy's own statements, when offered by DLI against her, by definition are not hearsay. ER 801(d)(2).¹ Second, hearsay is admissible at an administrative hearing. RCW 34.05.452. Thus, all of the statements were properly considered and amply supported the determination that Ms. Roy was involved in the installation of the two satellite systems in Clarkston. The fact that Ms. Roy presented competing evidence is largely irrelevant to a reviewing court since it is the job of the finder-of-fact to determine which evidence to believe. The administrative law judge believed the testimony of Mr. Olson. This court cannot second guess that decision. *Thorndike v. Hesperian Orchards, supra*. Finally, Ms. Roy's own admitted acts of submitting the invoices and cashing the checks arguably were also enough involvement to constitute installation of a satellite system under the broad wording of the statute, which includes submitting a bid or offering to do work with the definition of installing a satellite system.

Ms. Roy also contends that DLI acted arbitrarily and capriciously in citing her when it also cited her brother for the same satellite installations. She cites no relevant authority in support of her argument. We see nothing arbitrary or capricious in citing both Satellite Store – WA and D&N Satellite, when both companies engaged in the installation of satellite equipment without the appropriate license.² A different situation

¹ ER 801(d)(2) provides that statements are not hearsay when “offered against a party and is (i) the party's own statement.”

might have existed if DLI had cited both a company and all of its employees for the same activity, but citing two companies which both engaged in the same prohibited conduct is not inappropriate.

Finally, Ms. Roy also argues that the superior court erred when it did not enter findings of fact and conclusions of law. There was no error. The superior court sat, as this court did, as an appellate court when it reviewed the Board's actions. RCW 34.05.558. A reviewing court, as opposed to a fact-finding body, does not enter its own findings of fact and conclusions of law. *Grader v. City of Lynnwood*, 45 Wn. App. 876, 879, 728 P.2d 1057 (1986). In the event a reviewing court does enter findings, they will be disregarded as surplusage by other reviewing courts. *Id.*; *Delagrave v. Employment Sec. Dep't*, 127 Wn. App. 596, 604, 111 P.3d 879 (2005).

The evidence permitted the Board to make the determinations it did. Accordingly, we affirm the citations and penalties.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

² The two companies violated the statute in different ways. D&N Satellite violated the statute by offering to install the system. Satellite Store – WA violated the statute by installing it. RCW 19.28.420(1).

Kulik, A.C.J.

Brown, J.